IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION No. 754 of 2005.

Vijay Kanuga. **.. Petitioner**.

Versus.

Maharashtra Housing & Area Development Authority & Ors. **..Respondents.**

Mr. R. D. Soni with Sujay Gawde with S.B. Kadam for the petitioner.

Mr. G. W. Mattos, A.G.P., for Respondent Nos.1, 2 and 5.

CORAM :H.L.GOKHALE &
S.R.DONGAONKAR.JJ.
DATE :19/04/2006.

P.C.

. Heard Mr. Soni in support of this petition. Mr. Mattos appears for the Respondent No. 1, 2 and 5. The petitioner was allotted flat No. 304 in Building No. 20 at Oshiwara Housing Complex, Andheri.Mumbai developed by first respondent, MHADA. Under the terms of allotment the petitioner was to pay the price at the rate of Rs. 3095/- per sq. ft. Those terms were of 31st July, 1998. If so happened that subsequently first respondent reduced the price of the tenaments in another building and it was reduced to Rs. 2,300/- per sq. ft. The allottees of the earlier buildings made a representation that they

should also be permitted to pay at the rate of Rs. 2,300/- only and not at Rs. 3,095/-. As far as the petitioner is concerned he wrote a letter surrendering his flat on 14th March, 2001. The case of petitioner in that letter was that he was seeking this reduction to the rate of Rs., 2,300/- and since that was not being considered, he was surrendering the flat and was seeking the refund of the amount which he had already paid. It is his further case that though he wrote that letter, the possession thereof was continued with him.

2] The case of the respondents,however, is that the petitioner had sub-let the premises to one Mrs. Sultana Mohammad Mehandi. This was noticed on 22.4.2004 and person in the premises handed over possession thereof to the respondents. The respondents have,thereafter, decided to allot the flat after an advertisement. Similar advertisements have been issued in other cases and they propose to allot this flat and also to refund the amount which has been paid by the petitioner after deducting the lawful claims of the respondent-authority.

3] It is submitted on behalf of the petitioner that some other occupants had filed petitions on a similar basis and their petitions

have come to be admitted and reliance is placed on the orders passed in those matters, such as Writ Petition No. 2003 of 2000 and Writ Petition No. 1710 of 2001. When we peruse those orders,it is seen that the petitioners were making grievances also about the manner in which the economic rent was determined and no reply was filed by the respondent-authority. That apart those were persons who had occupied their premises. Mr. Soni appearing for the petitioner has submitted that no proper procedure was followed while taking back the possession from the petitioner. However, in view of the surrender letter of the petitioner himself all that he had sought at that time was the return of the amount which he had paid to the respondent-authority alongwith some of the articles lying in the premises and he is seeking return of those articles. Now he is having second thoughts and having noticed the orders passed in other Petitions, the present petition has been filed and the submission is made that same relief be given to the petitioner. In view of that request we asked the respondents if they could re-allot the flat to the petitioner,provided he makes appropriate payment as per the terms of allotment in that behalf. Mr. Mattos has taken instructions from the respondents and the respondents were aggreable to hand over possession

to the petitioner provided he was ready to pay the price as determined by the respondent-authority. The respondents pointed out that the amount now payable will be Rs.37,29,407/-. The petitioner raised certain grievances about the manner in which the amount was arrived at. We have gone through those calculations and we do not find any error in that. The petitioner wanted instalments. The respondents were aggreable to give appropriate instalments also. But basically the petitioner is not aggreable to pay this price which the respondents otherwise will get when the flat is advertised. In the circumstances, now there is clear difference between the present matter and earlier two matters. Those petitions are admitted and the occupants residing in the flats are protected and the questions with respect to the appropriate price and economic rent are to be gone into. In view of the reasons hereinabove stated, we donot think that this petition should be maintained. Petition is dismissed.

4] Mr. Soni states that the petitioner is ready to pay today's economic rate. However, as per the calculations of the respondents, the petitioner is required to pay Rs.37,29,407/-, we are not inclined to permit him a departure from the claim made by them.

5] In view of the dismissal of the petition, it will be open to the respondents to proceed with the advertisement and to re-allot the flat thereafter. The respondents will refund the amount paid by the petitioner after deduction as per the rules. They will also return the articles which the petitioner is at liberty to collect within two weeks hereafter.

6] Mr. Soni applies for stay of this order. The request is rejected.

(H.L.GOKHALE,J.)

(S.R.DONGAONKAR,J.)